REMARKS/ARGUMENTS

Claims 55-82 are currently pending. Of these claims, claims 55-80 are rejected and claims 81 and 82 are withdrawn. As being drawn to a non-elected group but subject to rejoinder as discussed below. Applicants have amended claim 55 to recite that the same catalyst system is used to make the low molecular weight component and the high-molecular weight component of the compositions. Support for this amendment can be found for example in paragraphs [63] to [68] of the Specification. No claims are cancelled and no claims are added. Thus, no new matter is added by this Response.

Response to the Restriction Requirement

Claims 55-82 are subject to restriction and/or election requirement. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 55-80, drawn to a polyethylene blend and articles produced therefrom.

II. Claim 81, drawn to a method of increase the service life of a pipe

III. Claim 82, drawn to a polyethylene composition having properties different from those of the claims of Group I

The Applicants hereby elect Group I with traverse, i.e., Claims 55 - 80 directed to a polyethylene composition. The Applicants respectfully request the Examiner to reconsider the restriction requirement of Claim 81 into group II.

Specifically, the claim 81 of Group II depends from Claim 55. If Claim 55 is allowable, Claims 81 is allowable as a matter of law. The search and examination can proceed on the basis of Claim 40. As such, there is no additional burden on the part of the Patent Office to keep Claim 81 together with Claims 55-80. According to MPEP § 803, if the search and examination of patent claims can be made without serious burden, the examiner **must** examine it on the merits, **even though the application includes claims to independent or distinct inventions**. (emphasis added).

In addition to the above rule, the MPEP also provides for rejoinder of claims subject to a restriction requirement. According to MPEP § 821.04, non-elected process claims can be rejoined after an elected product claim is allowed if the process claims depend upon or otherwise include all the limitations of the allowable product claim. This rule applies squarely here. Therefore, it makes sense to keep Claim 81 together with Claims 55-80. For these reasons, the Applicants respectfully request the withdrawal of the restriction requirement between Groups I and II.

Response to the Rejection under §102(b) based on U.S. Pat. No. 4461873

The Examiner provisionally rejected 55-65, 72-75, and 78-80 under 35 U.S.C §102(b) as being anticipated by U.S. Pat. No. 4461873 to Bailey et al. (hereafter referred to as "the '873 patent"). The '873 patent describes polymer compositions made by mechanical blending of a variety of different commercially available components. Bailey does not teach, expressly or inherently, using the same catalyst to make the low molecular weight component and the high molecular weight component. In fact, the components that are

mechanically blended are from different suppliers. Consequently, the '873 patent fails to teach compositions where the blends include a low molecular weight component and a high molecular weight component that are made by the same catalyst. Thus, the '873 patent cannot anticipate the current claims. Therefore, the Applicants respectfully request the Examiner to withdraw the rejection.

Response to the Rejection under §102(b) based on U.S. Pat. No. 5319029

Claims 55, 57-61, 63, 72-73, and 79 and 80 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No. 5319029 to Martin et al (hereafter referred to as "the 029 patent"). Martin teaches a polymer composition where a low molecular weight component is made by a titanium catalyst and a high molecular weight component is made using a chromocene catalyst. *See e.g., Abstract.* Thus, the '029 patent does not anticipate claim 55, or claims dependent therefrom, which recites that the same catalyst is used to prepare the low molecular weight and the high molecular weight components. Therefore, the Applicants respectfully request the Examiner to withdraw the rejection.

Response to the Rejection under §102(b) based on U.S. Pat. No. 6462135

Claims 55, 57, 59-64, 72-75, and 78-80 are rejected under 3.5. U.S.C. §102(b) as being anticipated by U.S. Pat. No. 6462135 to Rohde et al (hereafter referred to as "the '135 patent). The '135 patent describes blend compositions made by using a chromocene catalyst to prepare the low molecular weight component and a Ziegler catalyst to prepare the high molecular weight component. *See e.g., Abstract.* Thus, the '135 patent does not anticipate claim 55, or claims dependent therefrom, which recites that the same catalyst is used to prepare the low molecular weight and the high molecular weight components. Therefore, the Applicants respectfully request the Examiner to withdraw the rejection.

Response to the Rejection under §102(b) based on U.S. Pat. No. 6545093

Claims 55-57, 59-64, 66,69, 71-74, and 77-80 are rejected under 3.5. U.S.C. §102(b) as being anticipated by U.S. Pat. No. 6545093 to de Lange et al (hereafter referred to as "the '093 patent). The '093 patent is directed to bi-modal blends comprising a low molecular weight component and a high molecular weight component. The blends are prepared by mechanical mixing of the two selected components. The low molecular weight component can be prepared by any method known to one skilled in the art, but chromocene or Ziegler catalysts are preferred. *Col. 3, ll. 43-46.* In contrast, the high molecular weight component is prepared by a Ziegler catalyst. *Col. 4, ll. 5-7.* There is nothing in the reference that teaches one skilled in the art to specifically select the same catalyst for making the low molecular weight component and the high molecular weight component. Moreover, the fact that the disclosure expressly states that the low molecular weight component may be a different catalyst type tends to indicate the opposite. There are innumerable Zeigler type catalysts known in the polymer industry. Thus, the generic teaching that the low molecular weight component may be made with the same type catalyst as the high molecular weight component is not a teaching that the catalysts are the same. Such a generic teaching is insufficient to destroy the novelty of claims reciting that the catalyst used to prepare the low molecular weight and the high molecular weight components is the same. Therefore, the Applicants respectfully request the Examiner to withdraw the rejection.

Response to the Rejection under §103(a) based on U.S. Pat. No. 4461873

Claims 55-75, and 78-80 are rejected under 3.5. U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 4461873 to Bailey et al (i.e. "the '873 patent). The Applicants have review the rejection and disagree for the following reasons.

The '873 patent fails to teach or suggest fails to teach or suggest each and every element of the claims. According to the teaching of the '873 patent the components can be prepared with "high productivity catalysts such as titanium/magnesium catalysts." *Col. 3, ll. 54-58.* In the '873 patent, a variety of components from a variety of commercial suppliers are blended together. The fact that a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. *In re Baird,* 29 USPQ2d 1550, 1552 (Fed. Cir. 1994); *In re Jones*, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992). *See also In re Deuel*, 34 USPQ2d 1210, 1215 (Fed. Cir. 1995). The fact that different commercial suppliers are used practically ensures that the components are made by different catalysts. Thus, the '873 patent fails to specifically suggest compositions wherein the low molecular weight component and the high molecular weight component are made with the same catalyst. The mere absence of an explicit requirement cannot reasonably be construed as an affirmative statement that the teaching is in the reference. *In re Evanega*, 4 USPQ2d 1249 (Fed. Cir. 1987). Consequently, the '873 fails to establish a *prima facie* case of obviousness against claim 55 and claims dependent therefrom.

In addition, to establish a *prima facie* case of obviousness, it is essential that there be some motivation or suggestion to make the claimed invention in light of the prior art teachings. *See, e.g., In re Brouwer,* 37 USPQ2d 1663, 1666 (Fed. Cir. 1996). There is nothing in the teachings of the '873 patent that suggests that compositions where the low molecular weight component and the high molecular weight component prepared by the same catalyst were even prepared. Thus, the reference lacks this a motivation or suggestion to make the claimed invention. Consequently, the '873 patent fails to establish a prima facie case of obviousness against claim 55 and claims dependent therefrom.

Moreover, the claims would not have been obvious "unless the prior art suggested the desirability of [such a] modification." *In re Gordon,* 221 USPQ 1125, 1127 (Fed. Cir. 1984). In order to find such motivation or suggestion there should be a reasonable likelihood that the claimed invention would have the properties disclosed by the prior art teachings. MPEP §2144.08; *see, e.g., In re Vaeck*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). As mentioned above, the '873 disclosure identifies any number of components that can be from different suppliers. Nothing in the disclosure indicates that compositions wherein the components are made by the same catalyst would be expected to have improved properties. Thus, the '873 patent fail to provide the required suggestion that the modification would be desirable. And fails to instill in one or ordinary skill in the art that the claimed compositions would have the properties disclosed in the '873 patent. Consequently, the '873 patent fails to establish a prima facie case of obviousness with respect to claim 55 and claims dependent thereon are not.

CONCLUSION

Applicants have addressed all of the Examiner's rejections. Applicants believe that the claims are now in condition for allowance and respectfully request that the Examiner grant such an action. If any questions or issues remain in the resolution of which the Examiner feels will be advanced by a conference with the Applicants' attorney, the Examiner is invited to contact the attorney at the number noted below. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 13-0480, reference 43225.44575CUSC(ABDON).

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Respectfully submitted,

By _____

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